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# State v. L'Abbe Respondent's Brief Dckt. 39376

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO, )  
 )  
Plaintiff-Respondent, ) NO. 39376  
 )  
vs. )  
 )  
STEPHEN D. L'ABBE, )  
 )  
Defendant-Appellant. )  
\_\_\_\_\_ )

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA

HONORABLE KATHRYN A. STICKLEN  
District Judge

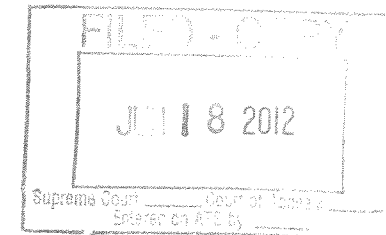
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PLAINTIFF-RESPONDENT



PRO SE  
DEFENDANT-APPELLANT

## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of Facts and Course of Proceedings .....	1
ISSUES .....	2
ARGUMENT .....	3
L'Abbe Has Failed To Establish That The District Court Erred In Affirming His Conviction And The Denial Of His Motion To Dismiss .....	3
A.    Introduction .....	3
B.    Standard Of Review .....	3
C.    The District Court Correctly Determined That L'Abbe's Jurisdictional Arguments Were Without Merit .....	4
CONCLUSION.....	6
CERTIFICATE OF MAILING .....	7
APPENDIX A	

## **TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGE</u></b>
<u>Losser v. Bradstreet</u> , 145 Idaho 670, 183 P.3d 758 (2008).....	3, 4
<u>Matter of Hanson</u> , 121 Idaho 507, 826 P.2d 468 (1992) .....	4
<u>Nicholls v. Blaser</u> , 102 Idaho 559, 633 P.2d 1137 (1981) .....	4
<u>State v. Cronin</u> , 923 P.2d 694 (Wash. 1996).....	4
<u>State v. DeWitt</u> , 145 Idaho 709, 184 P.3d 215 (Ct. App. 2008).....	3
<u>State v. Jones</u> , 140 Idaho 755, 101 P.3d 699 (2004) .....	5, 6
<u>State v. Kavajecz</u> , 139 Idaho 482, 80 P.3d 1083 (2003) .....	4
<u>State v. Rogers</u> , 140 Idaho 223, 91 P.3d 1127 (2004) .....	4, 5, 6
<u>State v. Simmons</u> , 115 Idaho 877, 771 P.2d 541 (Ct. App. 1989).....	5
 <b><u>STATUTES</u></b>	
Boise City Code § 6-01-15 .....	5, 6
Idaho Code § 18-202.....	5
 <b><u>RULES</u></b>	
I.C.R. 4 .....	4
I.C.R. 10 .....	4

## STATEMENT OF THE CASE

### Nature of the Case

Stephen D. L'Abbe appeals, *pro se*, from the district court's memorandum decision affirming the judgment entered upon L'Abbe's conditional guilty plea to a misdemeanor open container violation.

### Statement of Facts and Course of Proceedings

The district court set forth the facts and procedural history of the underlying case as follows:

L'Abbe was cited by a Boise police officer for [an] open container violation on October 9, 2010. [(R., p.4.)] On October 29, 2010, the magistrate found probable cause that L'Abbe had committed the offense. [(R., p.13; see also pp.14-15 (Complaint).)]

On January 14, 2011, L'Abbe filed a "motion to dismiss on the merits with prejudice." [(R., p.39; see also pp.17-24 (motion to dismiss filed before arraignment).)] In this motion, he stated that "I hereby motion this action be dismissed on its merits with prejudice for lack of jurisdiction in the interest of justice." [(R., p.39.)] [The magistrate denied L'Abbe's motion. (R., pp.44-46; see also pp.26, 212 n.1 (L'Abbe raised same jurisdictional arguments at arraignment where "most of his objections and motions were overruled and denied").)]

On January 26, 2011, [L'Abbe] entered a guilty plea, conditioned on an appeal asserting "jurisdictional issues," and was ordered to pay a fine and costs in the amount of \$162.50, stayed pending appeal. [(R., pp.44-48.)]

(R., pp.212-13 (record citations added).) L'Abbe timely appealed to the district court, which affirmed. (R., pp.49-52, 212-16.) L'Abbe again timely appeals. (R., pp.217-29.)

## ISSUES

L'Abbe's issue statement is set forth at pages 29-35 of his Appellant's brief and, due to its length, will not be repeated here. L'Abbe does state, succinctly, that the "ultimate issue is jurisdiction." (Appellant's brief, p.29 (capitalization altered, underlining omitted).)

The state rephrases the issue on appeal as:

Has L'Abbe failed to establish that the district court erred in affirming his conviction and the denial of his motion to dismiss?

## ARGUMENT

### L'Abbe Has Failed To Establish That The District Court Erred In Affirming His Conviction And The Denial Of His Motion To Dismiss

#### A. Introduction

L'Abbe moved to dismiss the complaint charging him with an open container violation, apparently claiming the court lacked both personal and subject matter jurisdiction. (R., pp.17-24, 39-40.) The magistrate denied L'Abbe's motion and the district court affirmed, ruling that L'Abbe's jurisdictional claims were without merit. (R., pp.26, 44-46, 212-16.) On appeal, L'Abbe largely reasserts the arguments he advanced to the magistrate and district courts (compare R., pp.17-24, 39-40, 60-105 with Appellant's brief), but he has failed to carry his appellate burden of showing error in the lower courts' rulings.

#### B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court reviews the magistrate record "to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id. "If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, [the appellate court] affirm[s]

the district court's decision as a matter of procedure.” Id. (citing Losser, 145 Idaho at 670; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

Whether a court has jurisdiction is a question of law, given free review. State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003).

C. The District Court Correctly Determined That L’Abbe’s Jurisdictional Arguments Were Without Merit

Before a defendant can be held to answer in a criminal case, the court in which the proceeding is commenced must have both personal and subject matter jurisdiction. State v. Rogers, 140 Idaho 223, 228, 91 P.3d 1127, 1132 (2004). Personal jurisdiction refers, generally, “to the court’s authority to adjudicate the claim as to the person.” Id. at 227, 91 P.3d at 1131 (quoting Matter of Hanson, 121 Idaho 507, 509, 826 P.2d 468, 470 (1992)). Subject matter jurisdiction, on the other hand, refers to the court’s authority to adjudicate the case. Id. As he did below, L’Abbe appears to claim that the magistrate lacked personal and subject matter jurisdiction to adjudicate the prosecution against him for violating the City of Boise’s open container ordinance. (Appellant’s brief, pp.29-48.) Contrary to L’Abbe’s assertions, however, correct application of the law to the facts shows that the magistrate had both personal and subject matter jurisdiction in the underlying case.

“In a criminal case, the court properly acquires personal jurisdiction over the defendant when the defendant appears at the initial court setting on a complaint or arraignment on the indictment.” Rogers, 140 Idaho at 228, 91 P.3d at 1132 (citing I.C.R. 4, 10; State v. Cronin, 923 P.2d 694, 697 (Wash. 1996));



see also State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004) (“Idaho courts obtain personal jurisdiction over a criminal defendant when the defendant initially appears in court.”). In this case, the magistrate acquired personal jurisdiction over L’Abbe when he appeared and was arraigned on the complaint charging him with possessing an open container of wine, in violation of Boise City Code § 6-01-15. (See R., pp.14-15 (complaint), 26 (minutes of arraignment at which L’Abbe appeared and objected to court’s jurisdiction).) It does not matter that L’Abbe objected to the court’s jurisdiction over him. “Idaho Code § 18-202 establishes the court’s personal jurisdiction over *all* individuals who commit a crime in this state.” Rogers, 140 Idaho at 228, 91 P.3d at 1132 (emphasis added). The mere unwillingness of a criminal defendant to assent to the court’s authority does not defeat the court’s lawful exercise of personal jurisdiction once the defendant personally appears in court. See State v. Simmons, 115 Idaho 877, 878, 771 P.2d 541, 542 (Ct. App. 1989) (citations omitted) (rejecting defendant’s claim that personal jurisdiction could not exist without a contract or his agreement thereto, stating, “[w]e have consistently and unequivocally rejected the notion that a state must contract with a citizen either to obtain personal jurisdiction or to subject the citizen to its laws”).

The magistrate also had subject matter jurisdiction. “Subject matter jurisdiction in a criminal case is conferred by the filing of an ‘information, indictment, or complaint alleging an offense was committed within the State of Idaho.’” Jones, 140 Idaho at 757-58, 101 P.3d at 701-02 (citing Rogers, 140 Idaho at 227, 91 P.3d at 1131). In this case, the state filed a criminal complaint

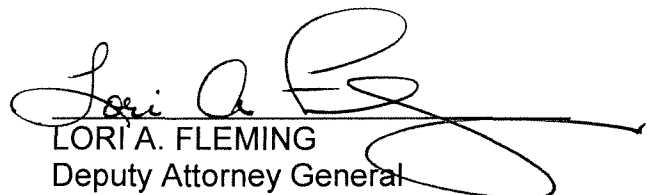
alleging that L'Abbe, "in the city of Boise, county of Ada, state of Idaho, did possess an open container of wine in a public place, which is in violation of Boise City Code § 6-01-15." (R., pp.14-15.) Because the charging document alleged an offense committed in the State of Idaho, it conferred on the magistrate subject matter jurisdiction to hear and determine the case. Jones, 140 Idaho at 757-58, 101 P.3d at 701-02; Rogers, 140 Idaho at 228, 91 P.3d at 1132.

As he did below, L'Abbe raises a number of arguments why he believes the magistrate lacked jurisdiction to adjudicate his case. (See Appellant's brief, pp.29-48.) L'Abbe's arguments fail for the reasons set forth by the district court in its Memorandum Decision And Order affirming the magistrate's decision, which the state adopts as its remaining argument on appeal. (See R., pp.212-16 (attached hereto as Appendix A).)

### CONCLUSION

The state respectfully requests this Court to affirm the district court's order affirming the judgment entered on L'Abbe's conditional guilty plea to a misdemeanor open container violation.

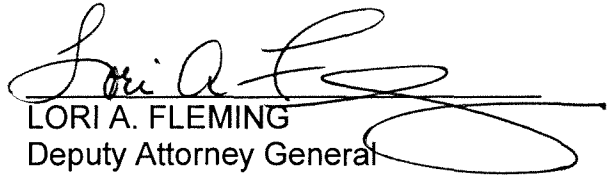
DATED this 18<sup>th</sup> day of June 2012.

  
LORI A. FLEMING  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18<sup>th</sup> day of June 2012, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

STEPHEN D. L'ABBE  
1614 MANITOU AVE.  
BOISE, ID 83706

  
LORI A. FLEMING  
Deputy Attorney General

LAF/pm

# **Appendix A**

OCT 11 2011

CHRISTOPHER D. RICH, Clerk  
By MARTHA LYKE  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,	)	
	)	
	)	
Plaintiff/Respondent,	)	
	)	Case No. CR-MD-2010-17572
vs.	)	
	)	MEMORANDUM DECISION
STEPHEN D. L'ABBE,	)	AND ORDER
	)	
Defendant/Appellant.	)	
_____	)	

This is an appeal by the Defendant Stephen D. L'Abbe (L'Abbe) after his guilty plea, before magistrate Hon. Daniel L. Steckel, to Possession of an Open Container of Alcohol, a violation of Boise City Code § 6-01-15.<sup>1</sup>

**FACTUAL AND PROCEDURAL BACKGROUND**

L'Abbe was cited by a Boise police officer for the open container violation on October 9, 2010. On October 29, 2010, the magistrate found probable cause that L'Abbe had committed the offense.

<sup>1</sup>Magistrate Theresa Gardunia held a hearing which appears to form the primary underlying basis for this appeal or at least that is where L'Abbe asserted his jurisdictional arguments in more detail and where most of his objections and motions were overruled and denied. Before Judge Steckel, the defendant eventually agreed to plead guilty to the charge, while preserving his right to raise the jurisdictional argument on appeal, after Judge Steckel denied his remaining motions.

On January 14, 2011, L'Abbe filed a "motion to dismiss on the merits with prejudice." In this motion, he stated that "I hereby motion this action be dismissed on its merits with prejudice for lack of jurisdiction in the interest of justice."

On January 26, 2011, the defendant entered a guilty plea, conditioned on an appeal asserting "jurisdictional issues," and was ordered to pay a fine and costs in the amount of \$162.50, stayed pending the appeal. No oral argument was requested: the case was submitted on the record and briefs.

## **STANDARD OF REVIEW**

### **A. Generally**

When a district judge considers an appeal from a magistrate judge (not involving a trial de novo), the district judge is acting as an appellate court, not as a trial court. *State v. Kenner*, 121 Idaho 594, 596, 826 P.2d 1306, 1308 (1992). The interpretation of law or statute is a question of law over which the Court has free review. *State v. Miller*, 134 Idaho 458, 462, 4 P.3d 570, 574 (Ct. App. 2000).

"A judgment of conviction supported by substantial and competent evidence will not be set aside on appeal. We will not substitute our view for that of the trier of fact as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn. Moreover, we will consider the evidence in the light most favorable to the prevailing party." *State v. Stricklin*, 136 Idaho 264, 269, 32 P.3d 158, 163 (Ct. App. 2001).

## **ANALYSIS**

L'Abbe, who is proceeding pro se, as he did below, has submitted a forty-five page "brief," in support of his appeal. In Idaho, "[p]ro se litigants are held to the same standards and rules as those represented by an attorney." *Golay v. Loomis*, 118 Idaho 387, 393, 797 P.2d 95, 101 (1990).

In this appeal, L'Abbe advances a number of arguments. Essentially, he challenges the magistrate's jurisdiction in this case.<sup>2</sup>

“Article V, § 2, of the Idaho Constitution provides, in part: ‘The judicial power of the state shall be vested in a court for the trial of impeachments, a Supreme Court, district courts, and such other courts inferior to the Supreme Court as established by the legislature . . . The jurisdiction of such inferior courts shall be prescribed by the legislature.’ The legislature has prescribed the assignment of misdemeanor proceedings to the magistrate division of the district court . . .” *State v. Wilder*, 138 Idaho 644, 645-46, 67 P.3d 839, 840-41 (Ct. App. 2003) “Wilder . . . filed a motion to dismiss the charge for lack of jurisdiction, contending that ‘he is not subject to any Court wherein the Supreme law of the land cannot be argued or applied in his defense.’” *Id.*

L'Abbe was charged with a violation of Boise City Code § 6-01-15. This is a misdemeanor offense. “Thus, the magistrate court had jurisdiction to try [the defendant] in this proceeding.” *Id.* at 646.

L'Abbe also appears to assert that judges have a conflict of interest in deciding cases involving the state because “[i]t is apparent they have an undeniable conflict of interest in all controversies which guarantees employment.” Appellant's Brief, at 35. A judge receiving a salary from a governmental entity is not disqualified from presiding in cases where that governmental entity is an interested party. *Priddel v. Shankie*, 69 CalApp2d 319, 327, 159 P.2d 438, 442-43 (1945).

L'Abbe further appears to assert that there can be no criminal conduct where, as here, there is no “damaged party.” “Even victimless crimes may be significant . . . and should not be so casually minimized . . . [i]n any case, this crime does have a victim, [the city or state], which as a governmental entity, must rely, sometimes in vain, on others to complain on its behalf.” *People v. Norman*, 6 Misc.3d 317, 351-52, 789 N.Y.S.2d 613, 645-46 (Super. 2004).

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<sup>2</sup>L'Abbe states that the “ultimate issue is jurisdiction.” Appellant's [Defendant's] Brief, at 32.


L'Abbe argues that only the common law is applicable here. In Idaho, as in most states, the common law is applicable where it is not inconsistent with the relevant statutes. I.C. § 73-116. *See Robinson v. State Farm Mutual Automobile Insurance Co.*, 137 Idaho 173, 181, 45 P.3d 829, 837 (2002) ("These rules of the common law are in effect in Idaho unless modified by other legislative enactments.").

Finally, L'Abbe objects to the Idaho Criminal Rules (I.C.R.) in this case, asserting the civil rules are applicable instead. I.C.R. 1 provides that "[t]hese rules apply to all criminal proceedings in the district courts and the magistrate divisions thereof of the state of Idaho . . . ." A misdemeanor prosecution is a criminal proceeding.

#### CONCLUSION

Accordingly, in view of the foregoing, the district court hereby affirms the magistrate's decision in this case.

SO ORDERED AND DATED THIS 10<sup>th</sup> day of ~~September~~<sup>October</sup> 2011.

  
\_\_\_\_\_  
Kathryn Sticklen  
Senior District Judge



### CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to Rule 77(d) I.R.C.P. to each of the parties of record in this cause in envelopes addressed as follows:

STEPHEN D. L'ABBE  
1614 S. MANITOU AVE.  
BOISE, ID 83706

BOISE CITY ATTORNEY'S OFFICE  
VIA INTERDEPARTMENTAL MAIL

CHRISTOPHER D. RICH  
Clerk of the District Court  
Ada County, Idaho

Date: Oct. 12, 2011

By Shirley Lyle  
Deputy Clerk